

C-8353

SUPREME COURT OF TEXAS CASES

013

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. U. KIRBY,
WILLIAM, ET AL. (3RD DISTRICT)

1988-89

C-8353
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. V.
WILLIAM, ET AL. (3RD DISTRICT)

KIRBY,

013
1988-89



local property owners and provides a superior education; and another class of poor schools that must impose a much higher tax burden on local property owners and provides an inferior, and unacceptable, level of education. Evidence of the two classes of schools is abundantly clear in every facet of public school fundings, from staffing to construction and is thoroughly documented in the trial court's findings.

Average annual expenditure per student. For the 1985-86 school year, the wealthiest schools in Texas spent an average of \$19,333 per student, while the poorest schools spent an average of only \$2,112 per student. (F.F. p. 15)

The Texas school finance system spends an average of \$2,000 more per year on the 150,000 students (5% of total) in the state's wealthiest districts than on the 150,000 students in the state's poorest districts. (F.F. p. 16) The range of expenditures per student unit in Texas is up from \$9,523 to \$1,060, an unacceptable ratio of 9 to 1. (F.F. p. 17) Consequently, a greater disparity exists between the average expenditure per student in wealthy and poor school districts.

Discrimination exists in the tax rates and ability to raise funds at certain tax rates. The trial court found that there exists significant funding disparities in the Texas system of public school finance based upon local wealth which result in depriving students in poorer districts of equal education opportunity and the "general diffusion of knowledge" required by Art. VII, §1. Too many of the poor districts do not, and will not, have an adequate tax base to generate the required funds. Therefore, unless resources outside the local economy are injected, poor school districts are inescapably locked into an unending and worsening cycle of inadequate fundings.

The lack of sufficient funds leaves the poor school districts unable and incapable of providing students an equal education opportunity. Even with

higher tax rates, poorer districts are unable to spend or even approach the amount spent per student by wealthier districts. On the other hand, because of adequate funding, wealthy school districts are able to provide a variety of quality education programs, including more extensive curriculum and more co-curricular activities, enhanced educational support through additional training materials and technology, improved libraries and library professionals, additional curriculum and staff development specialists and teacher aids, more extensive counseling services, special programs to combat dropouts, parenting programs to involve the family in the student's educational experience, lower pupil/student ratios and the ability to attract and retain better teachers and administrators. (TR 559)

Concentration of low income students in poor districts. The children of poor families are highly concentrated in the poorest school districts. Such children have the greatest educational needs and, often, the greatest education problems requiring the most expensive kind of educational programs. (TR 551) Therefore, the children whose need for an equal educational opportunity are greatest are denied this opportunity.

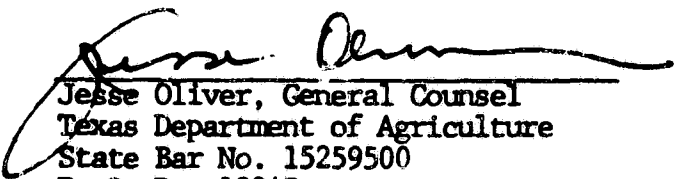
The significant disparities between poor districts and wealthy districts have imposed a serious and continuing inequities both in the financial burden placed upon poorer districts and in the denial of the opportunity for students in poorer districts to receive an education equal to that of wealthier districts. Although much progress has been made in recent years to improve the quality of our educational system through increased state funding and education reforms, serious deficiencies persist. At the core of the problem is a compelling need to change a system that places too much reliance on the economic status of arbitrary geographic areas in which schools are located. This is

especially true because a significant number of Texas school districts are property poor.

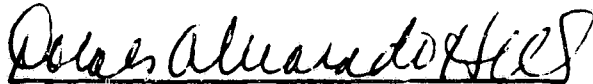
CONCLUSION AND PRAYER FOR RELIEF

In Texas, education is, and always has been, fundamental. Our current system of funding public schools relies in great part on revenues generated through local property taxes. The poorest school districts, which generally impose a much greater property tax rate than wealthier districts, are able to raise substantially less revenues at the local level because of reduced property values. As a result of unequal revenue raising abilities, the present public school system is comprised of two distinct classes of school districts: wealthy school districts that provide a variety of quality education programs, and poor school districts that cannot provide adequate teachers and administrators, library facilities, curriculum and staff development specialists, and other programs indispensable to a quality education. The quality of education is inextricably tied to the school district's ability to raise sufficient funds through local property taxes. Schools located in agricultural areas of Texas have a disproportionate share of poor schools, and manifest the worst effects of the present funding system. Texas should adopt a funding system which takes into account the inability of some local school districts to raise sufficient revenues to provide equal educational opportunity.

Respectfully submitted,



Jesse Oliver, General Counsel
Texas Department of Agriculture
State Bar No. 15259500
P. O. Box 12847
Austin, Texas 78711
(512) 463-7591



Dolores Alvarado Hibbs
Texas Department of Agriculture
State Bar No. 01125700
P. O. Box 12847
Austin, TX 78711
(512) 463-7583

Certificate of Service

This is to certify that on this 21st day of March, 1989, a true copy of the foregoing Amicus Brief of Jim Hightower, Commissioner of the Texas Department of Agriculture, was mailed by certified mail, return receipt requested, postage prepaid to the attorneys of record addressed as follows:

Mr. John F. Boyle, Jr.
Mr. Kenneth D. Dipple
Mr. Robert F. Brown
Hitchinson, Price, Boyle & Brooks
3900 First City Center
Dallas, TX 75201-4622

Mr. Richard E. Gray, III
Gray and Becker
323 Congress Ave., Ste. 300
Austin, TX 78701

Mr. James W. Deatherage
Power, Deatherage, Tharp and
Blankenship
1311 W. Irvin Blvd.
Irving, TX 75063-7220

Mr. Kevin T. O'Hanlon
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, TX 78711

Mr. Timothy L. Hall
Mr. Jim Turner
Hughes and Luce
400 W. 15th
Suite 1500
Austin, TX 78701

Mr. Jerry Hoodenpyle
Rohne, Hoodenpyle, Lobert and
Myers
P. O. Box 13010
Arlington, TX 76013

Mr. Camilo Perez-Bustillo
Mr. Roger Rice
META, Inc.
50 Broadway
Somerville, MA 02144

Mr. Robert E. Luna
Law Offices of Earl Luna, P.C.
4411 Central Bldg.
4411 N. Central Expressway
Dallas, TX 75205

Hon. Jim Mattox
Attorney General
Supreme Court Building
Austin, TX 78711-2548

Mr. David Hall
Texas Rural Legal Aid, Inc.
259 S. Texas
Weslaco, TX 78596-6112

Mr. Albert Kauffman
MALDEF
Book Bldg., Suite 300
140 E. Houston Street
San Antonio, TX 78205

Dolores Alvarado Hies

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners,

V.

WILLIAM KIRBY, ET AL.,

Respondents.

**BRIEF OF AMICUS CURIAE SOUTHWEST VOTER
REGISTRATION EDUCATION PROJECT
IN SUPPORT OF PETITIONERS' AND
PETITIONER-INTERVENORS' APPLICATIONS
FOR WRIT OF ERROR**

**ROLANDO RIOS
Attorney at Law
201 N. St. Mary's Street
Suite 521
San Antonio, TX 78205
(512)222-2102**

**ATTORNEY FOR SOUTHWEST
VOTER REGISTRATION
EDUCATION PROJECT**

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

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BRIEF OF AMICUS CURIAE SOUTHWEST VOTER
REGISTRATION EDUCATION PROJECT
IN SUPPORT OF PETITIONERS' AND
PETITIONER-INTERVENORS' APPLICATIONS
FOR WRIT OF ERROR

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, file this Brief in support of the Applications for Writ of Error filed by Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION
AND JURISPRUDENTIAL IMPORTANCE

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988): a lengthy dissenting opinion was filed in the court of appeals below; the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case, Stout v. Grand Prairie I.S.D., 733 S.W.2d, 294 (Tex.App.-- Dallas 1987, writ ref'd n.r.e.) (holding that education is a fundamental right under the Texas Constitution); this case involves the construction or validity of a state statute necessary to the determination of the case (Tex. Educ. Code §16.001, et seq.); this case involves the allocation of state revenue; and the court of appeals below has committed an error which is of "importance to the jurisprudence of the state." If left uncorrected, the judgment of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

INTEREST OF THE AMICUS CURIAE

The major question posed by work of the Southwest Voter Registration Education Project is whether it is healthy for American democracy to have a very large and very fast growing Hispanic population not participating in the democratic process. In a very real sense, it is inconceivable that our democracy can

remain vital and effective in the Southwest without Hispanic participation. Lack of participation by Hispanics leads to political alienation, and alienation leads to instability. Fortunately, a good start has been made towards resolving the problem.

In the past it was not unusual to have voter registration drop from one election cycle to the other. Since 1976, Hispanics have shown steady increases in voter registration to the extent that we are now the fastest growing electorate in the nation. Not only are we the fastest growing electorate in the nation. Not only are we the fastest growing in voter registration, but, according to the Census Bureau, we are the fastest growing in population--increasing by 23.8% in a short six year period (1980 to 1986), while the rest of the nation grew only 5.4%. The result of these factors is a dramatic increase in the number of Hispanic elected officials growing from 1,566 elected officials in 1974 to over 3,000 in 1988 in the five southwestern states of California, Arizona, Colorado, New Mexico and Texas.

Southwest Voter Registration Education Project

The Southwest Voter Registration Education Project (SVREP) is a 501(c)(3) non-profit, non-partisan, tax exempt organization committed to increasing the participation of Mexican American and other minority group members in the American democratic process. Founded in 1974, SVREP has conducted over 1,000 voter registration and voter education campaigns in approximately 200

communities in the states of California, Arizona, New Mexico, Colorado, Texas, Oklahoma, Utah, Nevada, Idaho, Montana, Wyoming, and South Dakota.

Since its inception in 1974 SVREP has grown to be the largest operation of its kind in the United States. As a result of evaluations undertaken by the major foundations involved in voter registration, SVREP is considered the most effective and cost efficient voter registration, voter education organization in the nation. In addition, a great percentage of the leadership from similar organizations has been trained by SVREP.

The Role of Education and Minority Civic Participation

If Hispanics are to sustain the upward momentum in registration and voting in the Hispanic community and at the same time improve the calibre of citizen participation then it is clear that raising the educational level of the Hispanic community is a necessary requisite.

Studies have consistently demonstrated a positive relationship between voting and education. In 1984 only 45% of the Hispanics with fewer than 5 years of schooling went to the polls compared to 53% who received a high school diploma and 74% who graduated from college. The more schooling an Hispanic has completed the more likely she is to vote.

Beyond exercising a citizen's most elementary right in a democracy, low educational levels among Hispanics will retard the social and material progress of Hispanic leadership. Within a

generation, each of the two largest states in the country California and Texas, will have a majority minority population. A majority population with low educational levels results in a majority alienated from the democratic process.

Concluding observations

In the next ten to fifteen years Hispanics in the Southwest will emerge a major political players. The recent gains made by Hispanics to elective office has been largely concentrated at the local level. Hispanic elected officials presently occupy a growing number of positions on local school boards and city councils; however, within the next fifteen years we will graduate leaders of ability from these modest positions to positions of greater influence and importance at the state and national levels.

But, before this developing cadre of leaders can attain the more prominent leadership positions, they must be knowledgeable about the great economic and political ideals which have formed and guided our nation. Equalizing educational opportunities and thereby raising the educational levels of all citizens in Texas provides the foundation of skills and knowledge that insures that Hispanics will share fully in the political life of this nation.

The future of this state is in the hands of our children and the generations to follow. Without equal access to the state's financial resources, the educational system of the state of Texas will continue to defraud those students who, by the vagaries of

location, do not live within the areas of the state that reap the benefits of the present school finance system.

FACTS OF THE CASE

The trial court's extensive findings of fact have been undisturbed on appeal. These fact findings depict the gross inequity of the Texas school finance system. It is these inequities and disparities that are confronted by students in property-poor districts on a daily basis.

There is a vast disparity in local property wealth among the Texas school districts. (Tr.548-50). ¹ The Texas School finance system relies heavily on local district taxation. (Tr.548). These two factors result in enormous differences in the quality of educational programs offered across the State.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr.555). Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend

¹The Transcript is cited at "Tr." The pages of the Transcript cited in this Brief contain the trial court's Findings of Fact and Conclusions of Law.

significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

The interdependence of local property wealth, tax burden, and expenditures, which is so debilitating to the property-poor school districts, is revealed in numerous fact findings of the trial court. For example, the wealthiest school district in Texas has more than \$14,000,000 of property wealth per student, while the poorest district has approximately \$20,000 of property wealth per student, a ratio of 700 to 1. (Tr.548). The range of local tax rates in 1985-1986 was from \$.09 (wealthy district) to \$1.55 (poor district) per \$100.00 valuation, a ratio in excess of 17 to 1. By comparison, the range of expenditures per student in 1985-1986 was from \$2,112 per student (poor district) to \$19,333 (wealthy district). (Tr. 550-52).

As the trial court found, differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). Such better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr.559). In addition, districts with more property

wealth are able to offer higher teacher salaries than poorer districts in their areas, allowing wealthier districts to recruit, attract, and retain better teachers for their students. (Tr. 559).

The denial of equal educational opportunities is especially harmful to children from low-income and language-minority families. As the trial court found, "children with the greater educational needs are heavily concentrated in the State's poorest districts." (Tr.562). It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Tr.563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

Not only are the disparities and inequities found to exist by the trial court shocking, they render the Texas school finance system constitutionality infirm.

ARGUMENT

I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS (Op.3-13).

A.

The denial of equal educational opportunity violates a fundamental right under the Texas Constitution. "Fundamental rights have their genesis in the expressed and implied protections of personal liberty recognized in federal and state

constitutions." Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex.1985). Recognizing that education is "essential to the preservation of the liberties and the rights of the people," Article VII, Section 1 imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J. 104, 106 (Dec. 7, 1988). Article I, Section 3 guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution.

Thus, our state constitution, unlike the federal Constitution, expressly declares the fundamental importance of education. Education provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. A constitutional linkage exists between education and the "essential principles of liberty and free government," protected by the Texas Bill of Rights. Tex. Const., art. I, Introduction to the Bill of Rights.

The Texas Legislature and Texas courts have also recognized that the Texas Constitution protects against the denial of equal educational opportunity. In authorizing the creation of the Gilmer-Aiken Committee to study public education in Texas, the Legislature recognized "the foresight and evident intentions of the founders of our State and the framers of our State

Constitution to provide equal educational advantages for all." Tex. H.C. Res. 48, 50th Leg. (1948). Moreover, Section 16.001 of the Texas Higher Education Code, enacted in 1977, recognizes the policy of the State of Texas to provide a "thorough and efficient" education system "so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors." Two courts have concluded that Article VII, Section I's efficiency mandate connotes equality of opportunity. Mumme v. Marrs, 40 S.W.2d 31 (Tex.1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). Finally, the only other Texas appellate court to directly confront the fundamental right question has concluded, citing Article VII, that education is indeed a fundamental right guaranteed by the Texas Constitution. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App. -- Dallas 1987, writ ref'd n.r.e.).

B.

Wealth is a suspect category in the context of discrimination against local-income persons by a state school finance system. Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 957, 135 Cal.Rptr. 345 (1976). In addition, a fundamental right cannot be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gammage, in his dissenting opinion, ably distinguishes San Antonio I.S.D. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), the sole case relied upon by the Court of

Appeals in its suspect classification analysis. (Diss.Op.9-10). The Rodriguez Court observed: "There is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now benefits from a record replete with substantiated and undisputed findings on the wealth issue. (Tr. 562-565). For example, "[t]here is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr.563).

C.

Because the Texas school finance system infringes upon a fundamental right and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stamos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the burden upon a suspect class must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex.1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v. Bynum, 699 S.W.2d 194 (Tex.1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v. University Interscholastic League, 599 S.W.2d 170 (Tex.1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. "Local control" has been proffered as a justification, but this concept marks the beginning, not the end, of the inquiry. Local control does not mean control over the formation of school district or the determination of their boundaries. This is a State function, for school districts are nothing more than "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd). Local control does not mean preservation of established communities of interest. For, as found by the trial court, "[n]o particular community of interest is served by the crazy quilt

scheme that characterizes many of the school district lines in Texas." (Tr.591). Local control does not mean control of the tax burden or quality of the educational product. As the trial court found, "[l]ocal control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and/or State Board of Education rule." (Tr.576).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas School finance system. First, Article VII, Section 1, of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that a "thorough and efficient system be provided ... so that each student ... shall have access to programs and services.... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of the system. These findings reveal the vast disparity in property wealth (Tr.548-49), tax burden (Tr.553-55), and expenditures (Tr.551-60); the failure of state aid to cover the real cost of education (Tr.565-68); the absolute absence of any underlying rationale in the district boundaries of many

school districts (Tr.573); and the denial of equal educational opportunity to many Texas school children (Tr.601). The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aiken Committee Report of 1948; and the Governor's Committee on Public School Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op.13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex.Const.art.VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op.15).

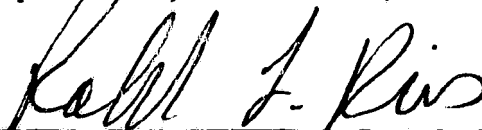
State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens imposed upon poorer districts constitute deprivations of property

without due course of law, in violation of Article I, Section 19 of the Texas Constitution.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr.592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgment of the court of appeals and affirm the judgment of the trial court. We must no longer tolerate an educational system that perpetuates such inequity and inequality and causes such harm to our children.

Respectfully submitted,



ROLANDO RIOS
Attorney at Law
201 N. St. Mary's Street
Suite 521
San Antonio, TX 78705
(512)222-2102

ATTORNEY FOR SOUTHWEST
VOTER REGISTRATION
EDUCATION PROJECT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this 29th day of March 1989, by United States Mail, postage prepaid to all counsel of record.



ROLANDO RIOS

CERTIFICATE OF SERVICE

This is to certify that on this 27 day of March, 1989, a true copy of the foregoing Amicus Brief of the Southwest Voter Registration Education Project mailed by certified mail, return receipt requested, postage prepaid to the following counsel of record:

Mr. John F. Boyle, Jr.
Hutchison, Price, Boyle & Brooks
3900 First City Center
Dallas, Texas 75201-4622

Mr. Camilio Perez-Bustillo
Mr. Roger Rice
META, Inc.
50 Broadway
Somerville, MA 02144

Mr. Richard E. Gray, III
Gray & Becker
323 Congress Ave., Ste. 300
Austin, TX 78701

Mr. Robert E. Luna
Law Offices of Earl Luna, P.C.
4411 Central Bldg.
4411 N. Central Expressway
Dallas, TX 75205

Mr. James W. Deatherage
Power, Deatherage, Tharp &
Blankenship
1311 W. Irvin Blvd.
Irving, TX 75063-7220

Attorney General Jim Mattox
Supreme Court Building
14th & Colorado
7th Floor
Austin, TX 78711

Mr. Kevin T. O'Hanlon
Assistant Attorney General
1124 S. IH-35
3rd Floor
Austin, TX 78711

Mr. David Hall
Texas Rural Legal Aid, Inc.
259 S. Texas
Weslaco, TX 78701

Mr. Timothy Hall
Hughes & Luce
400 W. 15th, Suite 1500
Austin, TX 78701

Mr. David Richards
Richards & Durst
600 West 7th Street
Austin, TX 78701

Mr. Albert H. Kauffman
MALDEF
140 E. Houston Street
Suite 300
San Antonio, TX 78205

Mr. Jim Turner
Attorney at Law
603 E. Goliad
Crockett, TX 75835

Mr. Jerry Hoodenpyle
Rohne, Hoodenpyle, Lobert &
Myers
1323 W. Pioneer Parkway
Arlington, TX 76013


ROLANDO RIOS

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NO. C-8353

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IN THE
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL

Petitioners

v.

WILLIAM KIRBY, ET AL

Respondents

AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

ANN W. RICHARDS
STATE TREASURER
TEXAS STATE TREASURY DEPARTMENT
111 East 17th Street
Austin, Texas 78701

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WILLIAM KIRBY, ET AL
Respondents

AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, State Treasurer Ann W. Richards files this Brief in support of the Applications for Writ of Error filed by Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenor, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION
AND JURISDICTIONAL IMPORTANCE

Jurisdiction exists under Tex. Gov't. Code Sec. 22.001(a)(1), (2), (3), (4) and (6). The Dallas Court of Appeals specifically held that "public education is a fundamental right guaranteed by the Texas Constitution" . . . even if "public education is not a right guaranteed to individuals by the United States Constitution," citing San Antonio I.S.D. v. Rodriguez, 411 U.S. 1 (1973) in Stout v. Grand Prairie I.S.D., 733 S.W. 2d 290, 294 (Tex. App. - Dallas 1987, writ ref'd n.r.e.). This directly conflicts with the Austin Court of Appeals decision in this case. This case also involves the construction and meaning of certain statutes, Tex. Educ. Code Sec. 16.001 et seq. and the budgeting and allocation of state revenues by the Legislature.

STATEMENT OF INTEREST

The Texas State Treasury Department (the "Treasury") acts as the state's "bank." The Treasury has responsibility for the deposit, investment, reinvestment and safekeeping of all monies belonging to the State of Texas and its agencies. The State Treasurer serves as a voting member on the State Depository Board and on the Bond Review Board.

The difficult economic times of the last few years have caused the creation of lean budgets without significant surpluses--surpluses which were used in the past to offset temporary cash flow shortages. Consequently, estimation of cash flow for both the long and short term has become one of the Treasury's most important responsibilities.

The ultimate resolution of this litigation and its financial implications for state government are, consequently, of tremendous interest to the Treasury.

Traditionally, state and local governments have shared the cost of public education. In response to the state's recent budget problems, the Legislature has increased the number of programs mandated by the state but funded by local revenues.

One such example is the new state requirement limiting class size to no more than twenty-two (22) students for one teacher in grades kindergarten through four. Yet there was no state money budgeted or sent to the local school districts for new classrooms. In fact, the formulas for funding education specifically exempt all school facilities. The local districts have been placed in a statutory and budgetary vise. The only method available to pay for compliance with state mandates is the issuance of general obligation tax bonds for all school building construction.

As of January 1, 1989 the total amount of general obligation school bonds issued in Texas was \$7,222,185,977.

The long term result of issuing this amount of general obligation debt places an unfair and unmanageable burden on poor school districts. ("Poor school district" is defined as a district with less than 50 percent of the state's average property wealth.)

These poor school districts cannot pay the debt service out of ad valorem taxation without reducing the amount of monies available for operating and maintaining quality school programs. In Texas today 1.5 million school children reside in poor school districts. These are the children who need state assistance the most because there are few resources available within their communities. The cruel irony is that the children who most need assistance get the least help.

Education is fundamental to economic prosperity in Texas. By the year 2000, 90 percent of the jobs in the United States will require more than a high school diploma. If Texas is to compete nationally, all of our children must have equal access to a quality education.

The cost of not educating our children is high. Today, more than 33 percent of our children fail to complete school. A recent study estimates that Texas loses about \$11.7 billion per year because of this dropout rate. This includes lost taxes and increased costs for welfare, health care, crime and prisons.

More than 85 percent of Texas prison inmates are high school dropouts. Many did not even reach the 10th grade. Welfare mothers average an eighth grade education. The poor school districts have the highest dropout rates. A large proportion of students in poor districts are disadvantaged and need additional help to stay in school.

The current funding system does not give these poor districts the resources needed to provide the basics, much less the special programs needed to help at-risk students finish their education.

As State Treasurer, my job is to ensure that the State of Texas meets its obligations in a timely and prudent fashion. The current method of school finance represents neither timely nor prudent fulfillment of the state's obligation to the school children of Texas.

For these reasons, Amicus Curiae urges this Court to grant petitioners' Application for Writ of Error and to reinstate the judgment of the trial court.

ARGUMENT

I. THE TEXAS CONSTITUTION EXPRESSLY RECOGNIZES EDUCATION AS A FUNDAMENTAL RIGHT.

A.

Fundamental rights can, and do, have their genesis in state constitutions. The U.S. Supreme Court in Pruneyard Shopping Center v. Robins, 447 U.S. 74, 81 (1980) held that a state may

exercise powers"... to adopt in its own constitution liberties more expansive than those created by the Federal Constitution." Texas' Constitution contains such an express expansion of constitutional liberties. Throughout its history Texas has expressly mandated and guaranteed the right of all men and women to an equal opportunity for an education. The origin of fundamental rights in the Texas Constitution was also acknowledged by the Texas Supreme Court. "Fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions". . . ., Spring Branch I.S.D. v Stamos, 695 S.W.2d 556, 560 (Tex. 1985). The Texas Constitution contains the following express provisions:

Texas Const. art. I, Sec. 3 provides:

"All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." (emphasis added)

Texas Const. art. VII, Sec. 1 provides:

"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provisions for the support and maintenance of an efficient system of public free schools." (emphasis added)

Article VII, Sec. 1 expressly requires the Texas Legislature to establish, support and maintain a system of public free schools. Texas has an unbroken legislative and constitutional history of expressly providing for education and legislative intent to provide an equal opportunity for an education to all citizens of this state.

B.

Because the Texas Constitution expressly requires the Legislature to act to provide suitable "support and maintenance" for public free schools it would be inconceivable to construe this mandate so that equal funding is not also mandated. Article I, Sec. 3 guarantees the equality of rights of all citizens. Without money to support and maintain schools, there can be no equal public free schools. Disparity of wealth creates unequal rights and unequal opportunity. Two courts have already held that Tex. Const. Art. VII, Sec. 1 implies equality of access and opportunity, Mumme v. Marrs, 40 S.W. 2d 31 (Tex. 1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex. App. -- Texarkana, 1938 writ ref'd). It takes no legal scholarship to understand the direct relationship of purchase power to school programs.

The findings of fact by the trial court contain numerous evidentiary examples of the inequity of educational opportunity engendered and encouraged by the present system of funding. The trial court found that one-third of the state's students receive inadequate educations. Findings of Fact and Conclusions of Law, (hereinafter "F.F."), p. 25.

"Historically there has been a pattern of wide variation of property wealth per pupil, expenditure per pupil and tax rates in school districts in Texas. These variations have consistently worked against the children attending low wealth districts, the districts themselves and the taxpayers in those districts." (F.F. 29-30).

II. DISPARITY OF WEALTH IS CREATED BY A FUNDING SYSTEM WHICH RELIES ON LOCAL AD VALOREM PROPERTY TAXES AND VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS.

A.

Our present financing system makes a mockery of the Legislature's stated education policy as contained in Tex. Educ. Code § 16.001; to provide "a thorough and efficient" education system with each student having "access to programs and services...that are substantially equal to those available to any similar student, notwithstanding varying local economic factors." (emphasis added). The disparity of wealth has been created because of the relationship between the formulas and factors for allotments under the Foundation School Program (the "FSP") "which do not fully state the real cost of providing adequate education programs," (F.F., p. 31) and ad valorem property tax rates.

To begin with, there are no FSP allotments for school facilities. (F.F. p. 31) All capital improvements for education, including but not limited to, construction of school buildings, gymnasiums, auditoriums, athletic stadiums and all site acquisitions must be paid for by each local school district. The school districts issue general obligation tax bonds in order to build these facilities. All payments of principal and interest on these school bonds are paid from ad valorem property taxes. Thus, the tax rate must be set at a sufficiently high rate to both raise the local share of FSP allotments, and to produce enough money to pay current bond debt service.

It is obvious that the assessed value of taxable property varies greatly. The disparities in Texas are as big as the state itself; the richest school district in the state has over \$14,000,000 in property wealth per student, and the poorest district has \$20,000 per student (F.F. p. 13). By the use of simple mathematics this means that richer school districts can set a lower tax rate to raise the same amount of money as poor school districts. The old adage that "the rich get richer and the poor get poorer" clearly applies to this situation. The tragic irony of the problem is that the least able to pay, must pay the most. Because the present funding system places such heavy reliance on funds raised by ad valorem taxation, it creates an unequal burden. As the trial court noted:

"When the tax rate required to raise unstated and understated program costs, as well as the rates needed for debt service, are added to the rates required to raise the local share of FSP allotments, the combined tax rates range from less than \$.03 in the richest districts to more than \$5.00 in the poorest district." (F.F. p. 32)

Succinctly stated, the Texas school finance system is unconstitutional because it relies so heavily on local district ad valorem property taxes. This reliance on ad valorem property taxes has created a vicious and unremitting cycle of poverty. (F.F. p.39). Property poor school districts must tax at a higher rate which depresses economic growth and discourages industry from locating there. Without a strong tax base, local school districts cannot pay for enrichment programs, in fact some districts cannot even pay their teachers adequate salaries. No industry would willingly choose to locate in a school district with a high tax base and inferior schools.

Two school districts in West Texas near the city of El Paso illustrate this synergistic downward spiralling of the present funding system toward relentless poverty. The San Elizario I.S.D. is so poor it cannot provide an adequate curriculum for its students. It offers no foreign languages, no pre-kindergarten program, no chemistry, no physics, no calculus and no college preparatory or honors programs. It cannot afford and has no extracurricular activities, i.e. no band, no debate and no football. (F.F. p. 25). As Defendant Kirby testified, "As in so many things, in education you get what you pay for." (F.F. p. 23).

Similarly, the Socorro I.S.D. has been forced to build new school buildings. The District issued general obligation tax bonds for the construction. Now, Socorro I.S.D. is unable to make its principal and interest payments and the school district faces potential bankruptcy (F.F. p. 25). The financial hole these school districts are in keeps getting deeper and deeper.

B.

The interdependence of local property wealth and the present funding system is so debilitating that it is discriminatory and amounts to a denial of equal rights under Art. I Sec. 3, and Art. VII, Sec. 1 of the Texas Constitution.

A fundamental right cannot be denied because of wealth. Shapiro v. Thompson 394 U.S. 618 (1969). The Texas Constitution provides for education as a fundamental right. Because the Texas school finance system infringes on a fundamental right, the financing system should then be subject to strict scrutiny under the Equal Protection Clause of the U.S. Constitution. Phyller v. Doe 102 S. Ct. 2382 (1982). This stringent standard of review requires a showing of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means in

order to be upheld. T.S.E.U. v. Department of Mental Health, 746 S.W. 2d 203 (Tex. 1987). Thus, under the Texas Supreme Court's own model of strict judicial scrutiny, discrimination against a suspect class or implicating a fundamental right "is allowed only when the proponent of the discrimination can prove there is no other manner to protect the state's compelling interest." In the Interest of Unnamed Baby McLean, 725 S.W.2d 696, 698 (Tex. 1987) and (F.F. p. 11). There is no state interest sufficiently compelling to permit this injustice to continue.


CONCLUSION AND PRAYER FOR RELIEF

The present school finance system must be changed. State imposed mandates for educational requirements cannot be paid by the poorer local school districts; most districts have already raised all possible revenue available from ad valorem property taxes. There is no more blood to be rung from that turnip.

Further, nothing in the trial court's Judgment mandates the state to take funds from property-rich school districts and redistribute them to property-poor districts nor would reducing any district's educational program further the state's responsibility to provide quality education. "Nothing in this Judgment is intended to limit the ability of school districts to raise and spend funds for education greater than that raised or spent by some or all other school districts..." The Legislature must review and reassign budgetary priority to fund education in order to supplement the poorer school districts.

The trial court correctly concluded that the Texas system of funding education is discriminatory because it results in intolerable disparities in money expended for education. Unlike the Rodriguez Court, this case deals with express state constitutional and statutory provisions and the trial court record abounds with substantiated evidence and undisputed findings on the wealth issue. There is ample evidence to support the conclusion that the poorest people are concentrated in the poorest school districts in Texas, e.g. "There is pattern of great concentration of both low income families and students in the poor district." (F.F. pg. 27-28). Children who happen to have been born or reside in a poor school district suffer from a denial of equal opportunity and equal access to an education. For the reasons stated in this Brief, the State Treasurer, Ann W. Richards acting by and through her General Counsel as Amicus Curiae requests that this Court reverse the judgment of the Court of Appeals and affirm the judgment of the trial court.

Respectfully submitted,


ANNE L. SCHWARTZ
General Counsel
Texas State Treasury Department
State Bar I.D. # 17859500
P.O. Box 12608
Austin, Texas 78711
(512) 463-5971

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Rec'd
FILED
IN SUPREME COURT
OF TEXAS

MAR 17 1989

ERCK & WRIGHT
ATTORNEYS AT LAW
1810 E. MAIN STREET, SUITE B
P. O. DRAWER 4040
ALICE, TEXAS 78333

JAMES A. ERCK
CLYDE L. WRIGHT, JR.
DAVID O. GONZALES

March 16, 1989

MARY M. WAKEFIELD, Clerk
By _____ Deputy

TELEPHONE
(512) 684-0903
FACSIMILE
(512) 684-5050

Ms. Mary M. Wakefield
Clerk
Supreme Court
Supreme Court Building
P. O. Box 12248
Austin, Texas, 78711

Re: No. C8353
Edgewood Independent School District, et al, Petitioners
vs.
William Kirby, et al, Respondents.

Dear Ms. Wakefield:

Enclosed herewith are twelve copies of the Brief of Amicus Curiae in Support of Petitioners and Petitioner-Intervenors of Banquete Independent School District for filing in the above referenced cause. Copies have been sent to all attorneys of record.

Sincerely,

ERCK & WRIGHT

Clyde L. Wright, Jr.
Clyde L. Wright, Jr.

CLWjr/lr
enclosure

xc: Mr. John F. Boyle, Jr.
Mr. Richard E. Gray, III
Mr. James W. Deatherage
Mr. Kevin T. O'Hanlon
Mr. Timothy L. Hall
Mr. Jerry Hoodenpyle
Mr. Camilo Perez-Bustillo
Mr. Robert E. Luna
Hon. Jim Mattox
Mr. David Hall
Mr. Albert H. Kauffman
Banquete Independent School District

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Respondents

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TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, Banquete Independent School District, file this Brief in Support of Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION
AND JURISPRUDENTIAL IMPORTANCE

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988): a lengthy dissenting opinion was filed in the court of appeals below; the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case, Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App. -- Dallas 1987, writ ref'd n.r.e.) (holding that education is a fundamental right under the Texas Constitution); this case involves the construction or validity of a statute necessary to the determination of the case (Tex. Educ. Code §16.001, et seq.); this case involves the allocation of state revenue; and the court of appeals below has committed an error which is of "importance to the jurisprudence of the state." If left uncorrected, the judgement of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

INTEREST OF THE AMICUS CURIAE

The undersigned are officials of school districts in Texas and others concerned with the quality of public education in this State. Our interest is in the education of the children of Texas.

The trial court's extensive findings of fact have been undisturbed on appeal. These fact findings depict well the gross inequity of the Texas school finance system. It is these inequities and disparities that we, like all school districts of limited taxable wealth, confront and combat on a daily basis.

There is a vast disparity in local property wealth among the Texas school districts. (Tr. 548-50).¹ The Texas school finance system relies heavily on local district taxation. (Tr. 548). These two factors result in enormous differences in the quality of educational programs offered across the State.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr. 555). Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

The interdependence of local property wealth, tax burden, and expenditures, which is so debilitating to the property-poor school districts, is revealed in numerous fact findings of the trial court. For example, the wealthiest school district in Texas has more than \$14,000,000 of property wealth per student, while the poorest district has approximately \$20,000 of property wealth per student, a ratio of 700 to 1. (Tr. 548). The range of local tax rates in 1985-86 was from \$.09 (wealthy district) to \$1.55 (poor district) per \$100.00 valuation, a ratio in excess of 17 to 1. By comparison, the range of expenditures

¹The Transcript is cited at "Tr." The pages of the Transcript cited in this Brief contain the trial court's Findings of Fact and Conclusions of Law.

per student in 1985-86 was from \$2,112 per student (poor district) to \$19,333 (wealthy district). (Tr. 550-52).

As the trial court found, differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). Such better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr. 559). In addition, districts with more property wealth are able to offer higher teacher salaries than poorer districts in their areas, allowing wealthier districts to recruit, attract, and retain better teachers for their students. (Tr. 559).

The denial of equal educational opportunities is especially harmful to children from low-income and language-minority families. As the trial court found, "children with the greatest educational needs are heavily concentrated in the State's poorest districts." (Tr. 562). It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Tr. 563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

Not only are the disparities and inequities found to exist by the trial court shocking, they render the Texas school finance system constitutionally infirm.

ARGUMENT

I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS (Op. 3-13).

A.

The denial of equal educational opportunity violates a fundamental right under the Texas Constitution. "Fundamental rights have their genesis in the expressed and implied protections of personal liberty recognized in federal and state constitutions." Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex. 1985). Recognizing that education is "essential to the preservation of the liberties and the rights of the people," Article VII, Section 1 imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. See, e.g., Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J.104, 106 (Dec. 7, 1988). Article I, Section 3 guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution.

Thus, our state constitution, unlike the federal Constitution, expressly declares the fundamental importance of education. Education

provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. A constitutional linkage exists between education and the "essential principles of liberty and free government," protected by the Texas Bill of Rights. Tex. Const., Art. I, Introduction to the Bill of Rights.

The Texas Legislature and Texas courts have also recognized that the Texas Constitution protects against the denial of equal educational opportunity. In authorizing the creation of the Gilmer-Aikin Committee to study public education in Texas, the Legislature recognized "the foresight and evident intentions of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all." Tex. H.C.Res. 48, 50th Leg. (1948). Moreover, Section 16.001 of the Texas Education Code, enacted in 1979, recognizes the policy of the State of Texas to provide a "thorough and efficient" education system "so that each student ... shall have access to programs and services that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors." Two courts have concluded that Article VII, Section I's efficiency mandate connotes equality of opportunity. Mumme v. Marrs, 40 S.W.2d 31 (Tex. 1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). Finally, the only other Texas appellate court to directly confront the fundamental right question has concluded, citing Article VII, that education is indeed a fundamental right

guaranteed by the Texas Constitution. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App.-- Dallas 1987, writ ref'd n.r.e.).

B.

Wealth is a suspect category in the context of discrimination against low-income persons by a state school finance system. Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 957, 135 Cal. Rptr. 345 (1976). In addition, a fundamental right cannot be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gammage, in his dissenting opinion, ably distinguishes San Antonio I.S.D. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), the sole case relied upon by the Court of Appeals in its suspect classification analysis. (Diss.Op. 9-10). The Rodriguez Court observed: "there is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now benefits from a record replete with substantiated and undisputed findings on the wealth issue. (Tr. 562-565). For example, "[t]here is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr. 563).

C.

Because the Texas school finance system infringes upon a fundamental right and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stamos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the burden upon a suspect class must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex.. 1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v. Bynum, 699 S.W.2d 194 (Tex. 1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v. University Interscholastic League, 599 S.W.2d 170 (Tex. 1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a

statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. "Local control" has been proffered as a justification, but this concept marks the beginning, not the end, of the inquiry. Local control does not mean control over the formation or financing of school districts. These are State functions, for school districts are "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas school finance system. First, Article VII, Section 1, of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that "a thorough and efficient system be provided ... so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of

the system. The findings reveal the vast disparity in property wealth (Tr. 548-49), tax burden (Tr. 553-55), and expenditures (Tr. 551-60); the failure of state allotments to cover the real cost of education (Tr. 565-68); and the denial of equal educational opportunity to many Texas school children (Tr. 601). The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aikin Committee Report of 1948; and the Governor's Committee on Public School Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in

exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op. 13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. Art. VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op. 15).

State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble

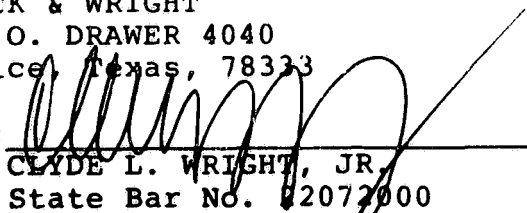
meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens imposed upon poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution. In addition, the disparate burdens imposed by the State fly in the face of the constitutional mandate that taxation "shall be equal and uniform." Tex.Const. Art. VIII, §1.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr. 592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgement of the court of appeals and affirm the judgement of the trial court. We must no longer tolerate an educational system that perpetuates such inequity.

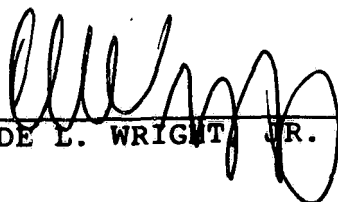
Respectfully submitted,
ERCK & WRIGHT
P. O. DRAWER 4040
Alice, Texas, 78323

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By: 
CLYDE L. WRIGHT, JR.
State Bar No. 02072000
Attorneys for Banquete
Independent School District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Support of Petitioners and Petitioner-Intervenors has been sent on this 16th day of March, 1989, by United States Mail, postage prepaid to all counsel of record.



CLYDE L. WRIGHT, JR.

COUNSEL OF RECORD FOR CERTIFICATE OF SERVICE

Mr. John F. Boyle, Jr.
Mr. Kenneth C. Dipple
Mr. Robert F. Brown
Hutchison, Price, Boyle & Brooks
3900 First City Center
Dallas, Texas 75201-4622

Mr. Richard E. Gray, III
Gray and Becker
323 Congress Ave., Ste. 300
Austin, Texas 78701

Mr. James W. Deatherage
Power, Deatherage, Tharp and
Blankenship
1311 W. Irvin Blvd.
Irving, Texas 75063-7220

Mr. Kevin T. O'Hanlon
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711

Mr. Timothy L. Hall
Mr. Jim Turner
Hughes and Luce
400 W. 15th
Suite 1500
Austin, Texas 78701

Mr. Jerry Hoodenpyle
Rohne, Hoodenpyle, Lobert and
Myers
P. O. Box 13010
Arlington, Texas 76013

Mr. Camilo Perez-Bustillo
Mr. Roger Rice
META, Inc.
50 Broadway
Somerville, MA 02144

Mr. Robert E. Luna
Law Offices of Earl Luna, P.C.
4411 Central Bldg.
4411 N. Central Expressway
Dallas, Texas 75205

Hon. Jim Mattox
Attorney General
Supreme Court Building
Austin, Texas 78711-2548

Mr. David Hall
Texas Rural Legal Aid, Inc.
259 S. Texas
Weslaco, Texas 78596-6112

Mr. Albert H. Kauffman
MALDEF
Book Bldg., Suite 300
140 E. Houston Street
San Antonio, Texas 78205

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NO. C-8353

MARY M. WAKEFIELD, Clerk

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IN THE

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL

Petitioners

v.

WILLIAM KIRBY, ET AL

Respondents

AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

W. C. KIRKENDALL
THRELKELD AND SAEGERT
113 West Gonzales Street
P. O. Box 509
Seguin, Texas 78156-0509
512/379-5322
State Bar Card No. 11517500

ATTORNEYS FOR SEGUIN INDEPENDENT
SCHOOL DISTRICT

NO. C-8353

IN THE
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL
Petitioners

V.

WILLIAM KIRBY, ET AL
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AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONERS AND PETITIONER-INTERVENORS

TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, the Seguin Independent School District, files this Brief in support of the Applications for Writ of Error filed by Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION AND JURISDICTIONAL IMPORTANCE

Jurisdiction exists under Tex. Gov't. Code Sec. 22.001(a)(1), (2), (3), (4) and (6). The Texas Constitution Article VII, Section 1, provides, inter alii, that it is the duty of the Legislature to provide for the "support and maintenance of an efficient system of public free school." This case involves the construction and meaning of that section of the Texas Constitution as well as the construction and meaning of various statutes including Texas Education Code, 16.001 et seq. Additionally, the Dallas Court of Appeals has ruled differently from the Austin Court of Appeals in this case on questions material to the decision of the case. Stout v Grand Prairie ISD, 733 S.W. 2d 290 (Tex. App.-Dallas 1987 n.r.e.). This case also involves the allocation of state revenue, and the Court of Appeals below has committed an error which is of "importance to the jurisdiction of the state."

STATEMENT OF INTEREST TO THE AMICUS CURIAE

The undersigned represents the Seguin Independent School District which is a "poor school district" under the existing funding system by reason of being a school district with less than 50% of the State's average property wealth. In addition, the Board of Trustees, the administration, and all the constituents of the Seguin Independent School District are interested in the education of the children of Texas and the quality of public education in this state.

Gross inequities exist within the Texas school finance system as depicted in the trial court's findings of fact.

Although the Texas Legislature has adopted numerous state requirements regarding education, there has been essentially no state money budgeted or sent to local school districts for such thing as new classrooms or other facilities. As this Court well knows, the Texas school finance system relies heavily on local district taxation. Thus, there are tremendous differences in funding availability from the richest districts to the poorest districts. Because of this disparity, the unfortunate situation has been created that the children who most need assistance get least because the local assets are largely consumed paying debt service for capital expenditures rather than providing direct educational assistance to the children.

The trial court found the differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (TR. 552).

Every school district wants to offer the most extensive curriculum available, enhanced educational support through laboratories, libraries, technology, and the like. In addition, in these days of high dropouts, programs to combat that problem are essential, as well as parenting programs to involve the family in the student's education experience. Districts with more property wealth are better able to offer those programs than the poorer districts for obvious reasons. Districts with more property wealth can offer higher teacher salaries thus allowing them to recruit and retain presumably better teachers.

The result of the funding inequity is to skew the entire system to the disadvantage of poor school districts.

For these reasons, amicus curiae, urges this Court to grant Petitioners' Application for Writ of Error and to reinstate the judgment of the trial court.

ARGUMENT

THE TEXAS CONSTITUTION EXPRESSLY RECOGNIZES EDUCATION AS A FUNDAMENTAL RIGHT AND, THEREFORE, SAID EDUCATIONAL RIGHTS SHOULD BE PROVIDED EQUALLY INSOFAR AS STATE FUNDING IS CONCERNED.

The Texas Constitution contains the following express provision:

Texas Constitution, Article VII, Section 1, provides:

"A general diffusion of knowledge being essential to the preservation of the liberties and the rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provisions for the support and maintenance of an efficient system of public free schools."

Texas of course has a grand history of providing for education and educational opportunity to all citizens of the state. However, because the Texas system of funding schools has evolved to the point where it is so grossly relies on local ad valorem revenue, the constitutionality of the existing system can no longer be supported.

The Dallas Court of Appeals has held:

"Public education is a fundamental right guaranteed by the Texas Constitution... although public education is not a right guaranteed to individuals by the United States Constitution." Stout v. Grand Prairie ISD, 733 S.W.2d 290 (Tex. App.-Dallas 1987, n.r.e.).

Even the primary defendant, Dr. Kirby, has said in his work, The Basics of Texas Public School Finance:

"Education is a fundamental interest of the State, and the State has both the authority and responsibility for education, including the methods of raising revenues and allocating funds for school."

To take the position that education is not a fundamental right, guaranteed by the Constitution, by statute, and by equity, is to deny possibly the most important necessity that a civilized country can provide for its citizenry. If education is not a fundamental right, to what extent can the State limit it; could the State exclude children from free public education before the

age of 10 or after the age of 14? Could the State eliminate teaching of certain basic skills such as reading, writing, or arithmetic, if education is not a fundamental right? When expressed in those extremes, it becomes obvious that the State cannot and should not be permitted to limit education in that manner. However, the present method of funding limits education in a different way.

Obviously disparity in wealth creates unequal rights and unequal opportunities. Each year, as the requirements of the state and our society increase, the poor school districts drop farther and farther behind as the funding fails to pay for the necessities and the local increment cannot bear the burden. The goal of our education, indeed the goal of any society, should be to narrow the gap between the richest and the poorest by providing equal opportunity for all; the effect of the Texas educational system is to exacerbate the differences.

When the basis of the Texas school funding system was created, Texas was a primarily rural state in which agricultural exemptions from taxation were used very rarely, if at all. Rural districts were able to compete, dollarwise, with larger urban districts. Now, in addition to the many additional stresses that are placed on the family unit and on society in general, rural districts are largely no longer able to compete because of vast open space valuation and the centralization of population and industry in the urban areas. The funding system which was arguably constitutional at the time adopted has now become unquestionably unconstitutional because of its effect upon the children of Texas.

Farm land values in Texas have hit an eight year low and have declined 29% since their peak in 1985. The severe drop in farm land values and the loss of land to foreclosure by lenders have severely reduced the tax revenues generated by rural school districts. As the Texas Department of Agriculture has pointed out, the top 20% of our counties in agricultural receipts contain 36% of the poorest school districts; even the most productive agricultural areas cannot support their schools properly. A disproportionate share of the poor school districts are in agricultural areas of the state.

The Texas Legislature has adopted Texas Education Code section 16.001, as amended, which reads as follows:

"It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue

sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

Certainly the current Texas funding scheme makes a mockery of that provision and flies in the face of the obvious legislative intent.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded that the Texas system of funding public education may be described as follows:

"The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed on local property taxes and the funding of Texas public education, these disparities and property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that the children in the property poor school districts suffer a denial of equal educational opportunity."

For the reasons stated in this Brief and for the concern that all the members of the Board of Trustees of the Seguin Independent School District hold for the children of our state, the undersigned amicus curiae request that this Court reverse the judgment of the Court of Appeals and affirm the judgment of the trial court.

Respectfully submitted,

THRELKELD AND SAEGERT
113 West Gonzales Street
P. O. Box 509
Seguin, Texas 78156-0509
512/379-5322

BY: 

W. C. KIRKENDALL

State Bar Card No. 11517500
ATTORNEYS FOR SEGUIN INDEPENDENT
SCHOOL DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Support of Petitioners and Petitioner-Intervenors has been sent on this 21st day of April, 1989, by United States Mail, postage prepaid to all counsel of record.



W. C. KIRKENDALL

COUNSEL OF RECORD FOR CERTIFICATE OF SERVICE

Mr. John F. Boyle, Jr.
Mr. Kenneth C. Dipple
Mr. Robert F. Brown
Hutchison, Price, Boyle & Brooks
3900 First City Center
Dallas, Texas 75201-4622

Mr. Richard E. Gray, III
Gray and Becker
323 Congress Ave., Ste. 300
Austin, Texas 78701

Mr. James W. Deatherage
Power, Deatherage, Tharp and
Blankenship
1311 W. Irvin Blvd.
Irving, Texas 75063-7220

Mr. Kevin T. O'Hanlon
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711

Mr. Timothy L. Hall
Mr. Jim Turner
Hughes and Luce
400 W. 15th
Suite 1500
Austin, Texas 78701

Mr. Jerry Hoodenpyle
Rohne, Hoodenpyle, Lobert and
Myers
P. O. Box 13010
Arlington, Texas 76013

Mr. Camilo Perez-Bustillo
Mr. Roger Rice
META, Inc.
50 Broadway
Somerville, MA 02144

Mr. Robert E. Luna
Law Offices of Earl Luna, P.C.
4411 Central Bldg.
4411 N. Central Expressway
Dallas, Texas 75205

Hon. Jim Mattox
Attorney General
Supreme Court Building
Austin, Texas 78711-2548

Mr. David Hall
Texas Rural Legal Aid, Inc.
259 S. Texas
Weslaco, Texas 78596-6112

Mr. Albert H. Kauffman
MALDEF
Book Bldg., Suite 300
140 E. Houston Street
San Antonio, Texas 78205

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BRIEF OF AMICUS CURIAE MEXICAN AMERICAN
AMERICAN BAR ASSOCIATION OF TEXAS
IN SUPPORT OF PETITIONERS' AND
PETITIONER-INTERVENORS' APPLICATIONS
FOR WRIT OF ERROR

JIM CORONADO
Attorney at Law
314 Highland Mall Blvd.
Suite 353
Austin, TX 78752
(512)451-8004

ATTORNEY FOR MEXICAN-
AMERICAN BAR ASSOCIATION
OF TEXAS

IN THE
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

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TO THE SUPREME COURT OF TEXAS:

Amicus Curiae, file this Brief in support of the Applications for Writ of Error filed by Petitioners, Edgewood Independent School District, et al., and Petitioner-Intervenors, Alvarado Independent School District, et al.

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STATEMENT OF JURISDICTION
AND JURISPRUDENTIAL IMPORTANCE

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988): a lengthy dissenting opinion was filed in the court of appeals below; the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case, Stout v. Grand Prairie I.S.D., 733 S.W.2d, 294 (Tex.App.-- Dallas 1987, writ ref'd n.r.e.) (holding that education is a fundamental right under the Texas Constitution); this case involves the construction or validity of a state statute necessary to the determination of the case (Tex. Educ. Code §16.001, et seq.); this case involves the allocation of state revenue; and the court of appeals below has committed an error which is of "importance to the jurisprudence of the state." If left uncorrected, the judgment of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

INTEREST OF THE AMICUS CURIAE

The Mexican American Bar Association of Texas represents the interests of the over 2,000 Hispanic lawyers of the State of Texas. MABA is organized into eight local chapters in Austin, Dallas, El Paso, Fort Worth, Houston, Lubbock, San Antonio, and Victoria. The association serves the Hispanic Bar and community

and seeks to promote the interests of the Hispanic people of Texas and to protect their interests in matters of legal concern. The organization accomplishes these goals through local chapter activities, including public forums, educational grants, continuing legal education, and political action. The state organization is vitally concerned in education and has established a foundation to advance the educational goals of the Hispanic people of Texas. MABA is interested in equal educational opportunities for all the Hispanic children in the State of Texas.

In the interest of promoting equal access to education to all citizens, the Bar Association is concerned with the way the public school financing system is currently being operated in the State of Texas. In support of Petitioner's Application for Writ of Error, the Mexican American Bar Association reiterates certain findings of fact made by the Trial Court in this case that support the conclusion that equal educational opportunity is not available to many students in the State of Texas. The Trial Court found that many of the poorer districts particularly hard hit by the financing system currently being used for public schools are located throughout South Texas. These ranch and farming communities are heavily populated by Mexican American students. Additionally poorer districts located in the urban areas tend to be populated by minority students. In order to promote the Mexican American Bar Association's purpose of advancing educational opportunities for minorities, we hereby submit this amicus curiae brief praying the Trial Court's ruling

in this case be affirmed and all children of Texas be given equal access to the benefits of a sound education.

FACTS OF THE CASE

The trial court's extensive findings of fact have been undisturbed on appeal. These fact findings depict the gross inequity of the Texas school finance system. It is these inequities and disparities that are confronted by students in property-poor districts on a daily basis.

There is a vast disparity in local property wealth among the Texas school districts. (Tr.548-50).¹ The Texas School finance system relies heavily on local district taxation. (Tr.548). These two factors result in enormous differences in the quality of educational programs offered across the State.

There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. (Tr.555). Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at much lower rates, are able to spend significantly more per student. Conversely, poorer districts

¹The Transcript is cited at "Tr." The pages of the Transcript cited in this Brief contain the trial court's Findings of Fact and Conclusions of Law.

endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

The interdependence of local property wealth, tax burden, and expenditures, which is so debilitating to the property-poor school districts, is revealed in numerous fact findings of the trial court. For example, the wealthiest school district in Texas has more than \$14,000,000 of property wealth per student, while the poorest district has approximately \$20,000 of property wealth per student, a ratio of 700 to 1. (Tr.548). The range of local tax rates in 1985-1986 was from \$.09 (wealthy district) to \$1.55 (poor district) per \$100.00 valuation, a ratio in excess of 17 to 1. By comparison, the range of expenditures per student in 1985-1986 was from \$2,112 per student (poor district) to \$19,333 (wealthy district). (Tr. 550-52).

As the trial court found, differences in expenditure levels operate to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students. (Tr. 559). Such better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr.559). In addition, districts with more property wealth are able to offer higher teacher salaries than poorer

districts in their areas, allowing wealthier districts to recruit, attract, and retain better teachers for their students. (Tr. 559).

The denial of equal educational opportunities is especially harmful to children from low-income and language-minority families. As the trial court found, "children with the greater educational needs are heavily concentrated in the State's poorest districts." (Tr.562). It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Tr.563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

Not only are the disparities and inequities found to exist by the trial court shocking, they render the Texas school finance system constitutionality infirm.

ARGUMENT

1. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS (Op.3-13).

A.

The denial of equal educational opportunity violates a fundamental right under the Texas Constitution. "Fundamental rights have their genesis in the expressed and implied protections of personal liberty recognized in federal and state constitutions." Spring Branch I.S.D. v. Stamos, 699 S.W.2d 556,

560 (Tex.1985). Recognizing that education is "essential to the preservation of the liberties and the rights of the people," Article VII, Section 1 imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J. 104, 106 (Dec. 7, 1988). Article I, Section 3 guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution.

Thus, our state constitution, unlike the federal Constitution, expressly declares the fundamental importance of education. Education provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. A constitutional linkage exists between education and the "essential principles of liberty and free government," protected by the Texas Bill of Rights. Tex. Const., art. I, Introduction to the Bill of Rights.

The Texas Legislature and Texas courts have also recognized that the Texas Constitution protects against the denial of equal educational opportunity. In authorizing the creation of the Gilmer-Aiken Committee to study public education in Texas, the Legislature recognized "the foresight and evident intentions of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all."

Tex. H.C. Res. 48, 50th Leg. (1948). Moreover, Section 16.001 of the Texas Higher Education Code, enacted in 1977, recognizes the policy of the State of Texas to provide a "thorough and efficient" education system "so that each student ... shall have access to programs and services ... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors." Two courts have concluded that Article VII, Section 1's efficiency mandate connotes equality of opportunity. Mumme v. Marrs, 40 S.W.2d 31 (Tex.1931); Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). Finally, the only other Texas appellate court to directly confront the fundamental right question has concluded, citing Article VII, that education is indeed a fundamental right guaranteed by the Texas Constitution. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App. -- Dallas 1987, writ ref'd n.r.e.).

B.

Wealth is a suspect category in the context of discrimination against local-income persons by a state school finance system. Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 957, 135 Cal.Rptr. 345 (1976). In addition, a fundamental right cannot be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gannage, in his dissenting opinion, ably distinguishes San Antonio I.S.D. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), the sole case relied upon by the Court of Appeals in its suspect classification analysis. (Diss.Op.9-10).

The Rodriguez Court observed: "There is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now benefits from a record replete with substantiated and undisputed findings on the wealth issue. (Tr. 562-565). For example, "[t]here is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr.563).

C.

Because the Texas school finance system infringes upon a fundamental right and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stanos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the burden upon a suspect class must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex.1987). The Texas school finance system surely cannot survive this heightened level of scrutiny. Even the United States Supreme Court recognized as much in Rodriguez. 36 L.Ed.2d at 33.

D.

Neither does the Texas school finance system satisfy rational basis analysis. In Whitworth v. Bynum, 699 S.W.2d 194 (Tex.1985), this Court articulated its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. Drawing upon the reasoning of Sullivan v. University Interscholastic League, 599 S.W.2d 170 (Tex.1981), the Court fashioned a "more exacting standard" of rational basis review. Whitworth, 699 S.W.2d at 196. As the Court stated in Sullivan, equal protection analysis requires the court to "reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. The Texas school finance system cannot withstand review under the Texas rational basis test. "Local control" has been proffered as a justification, but this concept marks the beginning, not the end, of the inquiry. Local control does not mean control over the formation of school district or the determination of their boundaries. This is a State function, for school districts are nothing more than "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App. -- Texarkana 1930, writ ref'd). Local control does not mean preservation of established communities of interest. For, as found by the trial court, "[n]o particular community of interest is served by the crazy quilt scheme that characterizes many of the school district lines in Texas." (Tr.591). Local control does not mean control of the

tax burden or quality of the educational product. As the trial court found, "[l]ocal control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and/or State Board of Education rule." (Tr.576).

In contrast to local control, there are two constitutionally and statutorily stated purposes underlying the Texas School finance system. First, Article VII, Section 1, of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Second, Section 16.001 of the Texas Education Code expresses the State policy that a "thorough and efficient system be provided ... so that each student ... shall have access to programs and services.... that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors."

The Texas school finance system is not rationally related to any of the above-discussed alleged or actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of the system. These findings reveal the vast disparity in property wealth (Tr.548-49), tax burden (Tr.553-55), and expenditures (Tr.551-60); the failure of state aid to cover the real cost of education (Tr.565-68); the absolute absence of any underlying rationale in the district boundaries of many school districts (Tr.573); and the denial of equal educational opportunity to many Texas school children (Tr.601). The

irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken, including the Statewide School Adequacy Survey, prepared for the State Board of Education in 1935; the Gilmer-Aiken Committee Report of 1948; and the Governor's Committee on Public School Education Report of 1968.

E.

Finally, the Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM (Op.13).

The court of appeals erred in refusing to determine whether the current system meets the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex.Const.art.VII, §1. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. Courts are competent to make this inquiry. The findings of the trial court, and the conclusions reached in every serious study of Texas education, reveal the gross inefficiency and inequity of the current Texas school finance system.

III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF LAW PROVISION OF THE TEXAS CONSTITUTION (Op.15).

State officials have thrust increasingly heavy financial burdens upon local school districts. Wealthy districts have little trouble meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The disproportionate burdens

imposed upon poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution.

CONCLUSION AND PRAYER FOR RELIEF

The trial court correctly concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr.592). For the reasons stated in this Brief, the undersigned amicus curiae request that this Court reverse the judgment of the court of appeals and affirm the judgment of the trial court. We must no longer tolerate an educational system that perpetuates such inequity and inequality and causes such harm to our children.

Respectfully submitted,

JIM CORONADO
Attorney at Law
314 Highland Mall Blvd.
Suite 355
Austin, TX 78752
(512)451-8004

Attorney for Mexican
American Bar Association
of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error has been sent on this ____ day of March 1989, by United States Mail, postage prepaid to all counsel of record.



JIM CORONADO

March 15, 1989

Hon. Mary Wakefield
Clerk
Texas Supreme Court
Supreme Court Building
14th & Colorado
Room AG-11
Austin, TX 78701

Re: No. C-8353 - Edgewood Independent School
District, et al., v. William Kirby, et al.

Dear Friends:

Enclosed please find an original and 12 copies of Brief of Amicus Curiae Texas Association of Mexican American Chambers of Commerce in Support of Petitioners' and Petitioner-Intervenors' Applications for Writ of Error to be filed in the above styled and numbered cause.

We request that you file stamp the additional copy and return to us in the enclosed self-addressed stamped envelope.

Copies are being served on all counsel of record.

Thank you for your attention to this matter.

Sincerely,

Henry Flores
HENRY FLORES (mg)

HF:mg

cc: All counsel of record

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IN SUPREME COURT
OF TEXAS

C 8353
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APR 11 1989

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MARY ELIZABETH WATKINS, Clerk

By _____ Deputy

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V.

WILLIAM N. KIRBY AND OTHERS,

Respondents

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AND TEXAS CIVIL LIBERTIES UNION
IN SUPPORT OF
PETITIONERS' AND PETITIONER-INTERVENORS'
APPLICATIONS FOR A WRIT OF ERROR

Peter Linzer
University of Houston Law Center
Houston, Texas 77204-7061
(713) 749-7380 or 721-3118
State Bar No. 12393650

Attorney-in-Charge for Amici Curiae

James C. Harrington
Texas Civil Liberties Union
1611 E. First Street
Austin, TX 78702-4455
(512) 477-8349
State Bar No. 09048500

Attorney for Amici Curiae

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State Bar No. 12393650

Attorney-in-Charge for Amici Curiae

James C. Harrington
Texas Civil Liberties Union
1611 E. First Street
Austin, TX 78702-4455
(512) 477-5849
State Bar No. 09048500

Attorney for Amici Curiae

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TO THE SUPREME COURT OF TEXAS:

Amici curiae, the National League of United Latin American Citizens ("LULAC"), the American GI Forum of Texas, The United Farm Workers (AFL-CIO), the Chicano Law Students Association of the University of Texas at Austin, and the Texas Civil Liberties Union, submit this brief in support of the application of petitioners and petitioner-intervenors for writ of error.

The amici respectfully urge reversal of the judgment of the Court of Appeals and reinstatement of the judgment of the District Court, modified to award attorneys' fees to petitioners and petitioner-intervenors.